

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WADE SHOWS, INC.,

Plaintiff,

v.

YRC WORLDWIDE, INC., and PERRY
MARTIN WARE,

Defendants/Third-Party
Plaintiffs,

v.

BARBARA BRITO DE LA TORRE, BBT
TRANSPORT, INC., a Florida corporation,
and KEEP GOING SERVICES CORP.,

Third-Party Defendants.

4:13CV03124

ORDER

During the conference call held today with counsel for all parties, the court was notified that:

- The parties participated in mediation on October 14, 2015;
- With the exception of Perry Martin Ware's personal injury claim against Third-Party Defendants, Barbara Brito De La Torre, BBT Transport, Inc., and Keep Going Services Corp., (see Filing No. 72), all claims in this lawsuit have been settled;
- The ability to negotiate and possibly settle Ware's personal injury claim was stalled due to issues over the percentage or allocation owed for payment of a worker's compensation subrogation interest; and
- Absent a determination on the allocation issue, either by alternative dispute resolution or by court order, it is unclear whether Ware's personal injury claim must be progressed to trial.

Ware's personal injury arose from an accident that occurred in Nebraska. Under Nebraska law, if an injured employee, the employer, and the workers' compensation

insurer “do not agree in writing upon distribution of the proceeds of any judgment or settlement, the court, upon application, shall order a fair and equitable distribution of the proceeds of any judgment or settlement.” Neb. Rev. Stat. § 48-118.04 (2).

Accordingly,

IT IS ORDERED:

1) Pursuant to Neb. Rev. Stat. § 48-118.04 (2), a telephonic hearing for determination of the equitable allocation of any judgment or settlement proceeds owed on Perry Martin Ware’s personal injury claim will be held before the undersigned magistrate judge, on the record, on October 22, 2015 at 1:00 p.m. Counsel for all interested parties shall participate in the conference using the call-in information assigned to this case. See Text Order 158.

2) On or before October 20, 2015, any exhibits the parties intend to offer for the hearing on October 22, 2015, shall be submitted to my chambers by email sent to zwart@ned.uscourts.gov.

3) The pending summary judgment motions, (Filing Nos. 127, 130, &133), are denied as moot.

4) The motion to file under seal, (Filing No. 166), is granted in part. Filing No. 167 shall be filed as a restricted access document.

5) The motion to continue, (Filing No. 168), is granted. The trial and pretrial conference settings are cancelled, and this case is stayed pending further order of the court.

6) If Perry Martin Ware's personal injury claim cannot be resolved by the parties on or before November 2, 2015, a telephonic conference with the undersigned magistrate judge will be held on November 3, 2015 at 11:00 a.m. to discuss a new progression schedule to trial. Ware's counsel shall place the call.

October 16, 2015.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge